WP(C) 4141/2002
BEFORE
THE HON'BLE MR. JUSTICE HRISHIKESH ROY

Heard Mr. A.C. Borbora, learned Senior Counsel appearing for the petitioner. The respondents are represented by Mr. M.K. Choudhury, learned Senior Counsel.

2. The petitioner who at the relevant time served as an Assistant Grade-III under the Food Corporation of India (FCI) challenges the penalty order dated 19.12.2001 (Annexure-E) and also the enquiry findings in pursuant to the disciplinary proceeding started with the Memorandum of Charge dated 20.6.2000 containing the following articles of charge :

Sri D. Narzary, AG.III (D) while posted at FSD, Banderdewa during the period 1.4.91 to 4.1.92 functioning as Depot in-charge of FSD, Banderdewa w.e.f. 13.5.91 to 4.1.92 acted in a manner unbecoming of a Corporation employee in as much as that he failed to maintain absolute integrity, devotion to duty, serve the Corporation honestly and faithfully by committing following irregularities.

ARTICLE OF CHARGE-I.

During conducting investigation by a committee for the period 1.4.91 to 31.12.91 detected a discrepancy of 2971 bags = 2643.31 Qtls. sugar fine Raw Rice. During the material period Shri D. Narzary, AG.III (D) being the stock holding official failed to discharge his duties sincerely and safeguard the interest of the Corporation.

ARTICLE OF CHARGE-II.

The said Sri Narzary had made the closing balance as Nil by showing the closing stock of 2971 bags=2643.31 Qtls. super fine Raw Rice as on 31.12.91 as issued out with the remark in the Master Ledger as less issue shown during Nov 91 instead of bringing the matter to the notice of his higher Authority. He did not take effective measures in detecting the losses in his shed in regard to super fine Raw Rice during his tenure of stay due to simple reason of his ulterior motive in it.

ARTICLE OF CHARGE-III.

He did not record the arrival weighment of 77 trucks during 29.7.91 to 13.11.91. This act of non-recording of arrival weighment facilitated him along with his Staff to indulge in misappropriation which had caused losses to the FCI to the tune of Rs.9,78,024,70.

Shri D. Narzary, AG.III (D) Depot-in-charge of FSD, Banderdewa by the above act had failed to maintain absolute integrity, devotion to duty and thereby made himself liable for disciplinary proceedings for violating Regulation 31 (a), (b), 32 and Regulation 32 A (5), (9), (30) of the FCI (Staff) Regulation 1971.

3. The charges related to failure to maintain absolute integrity; devotion to duty; misconduct; acting in a manner prejudicial to the interests of the Corporation; negligence in the performance of duty and also of conduct unbecoming of an employee of the Corporation, under different sub-heads of Regulation 31 and Regulation 32 A of the Staff Regulations 1971 of the FCI (hereinafter referred to as the Regulation).

4. In his reply dated 21.7.2000, the delinquent denied all the charges. Unsatisfied with his reply, an enquiry was ordered by the Disciplinary Authority and in the finding recorded on 7.9.2001 (Annexure-D), the Enquiry Officer concluded that all the charges have been proved against the delinquent. The Disciplinary Authority by his order dated 19.12.2001 (Annexure-E) accepted the enquiry finding and held that since misappropriation by the delinquent has caused loss to the tune of Rs.9,78,024.70 (Rupees nine lakhs seventy eight thousand and twenty four), penalty of recovery of the said misappropriated amount be made from the dues of the delinquent. The Statutory Appeal filed by the delinquent to challenge the penalty order was still pending, when the present writ petition was filed.

5.1 On behalf of the petitioner it is contended that the enquiry fin

ding as well as the disciplinary proceeding is vitiated because of denial of a f air opportunity to the delinquent to rebut the charges.

5.2 The petitioner refers to the report of the investigation carried out in May 1993 by a 3 Member Committee into the allegation of shortage of rice stock in the FCI Depot at Banderdewa and it is pointed out by Mr. Borbora that the report of the said Investigating Committee was never furnished to the delinq uent, although the enquiry officer categorically recorded that the charge was es tablished through the said investigation and that the delinquent had failed to r ebut the charges through cross-examination of the witnesses, who participated in the preliminary investigation.

5.3 The learned Counsel further submits that although the delinquent specifically requested for production of the Head of the Investigating team one Mr. K.S. Lather, the then Deputy Manager of FCI as a witness in the enquiry pro ceeding, the said officer was not produced and accordingly the delinquent was no t afforded the essential opportunity to subject the said witness to cross-examin ation on the investigation finding, during the enquiry.

5.4 Pointing out that the petitioner joined as the Depot In-charge o nly on 13.5.1991 and the discrepancy of the stocked rice in the godown pertain t o the period 1.4.1991 - 4.1.1992, the Counsel contends that at least for a porti on of the concerned period, the delinquent was not functioning as the Depot In-c harge and accordingly without an explanation on the quantum of loss for the peri od 1.4.1991 to 13.5.1991 when the delinquent was not the godown In-charge, he ca nnot be considered to be the sole person responsible for the alleged discrepancy of rice stock.

5.5 Mr. Borbora contends that since recovery of alleged pecuniary lo ss was ordered, which is a minor penalty prescribed under Regulation 54, the Dis ciplinary Authority was required to given a second show-cause notice on the prop osed penalty under Regulation 60(1)(a) and since no second show-cause notice was issued, the impugned penalty could not have been inflicted upon the delinquent.

5.6 The petitioner also contends that penalty of recovery has been i nflicted upon the delinquent by considering him to have misappropriated the rice stock, whereas no charge of misappropriation was leveled and no finding of misa ppropriation was recorded by the Enquiry Officer, against the delinquent.

6.1 Defending the impugned action, Mr. M.K. Choudhury, learned Senio r Counsel contends that the investigation by the 3 Member team was in the nature of a preliminary enquiry to decide as to whether a disciplinary proceeding is j ustified and since the charges was thereafter proved through a formal disciplina ry proceeding, the non-furnishing of the Investigating Report will not vitiate t he impugned action.

6.2 The respondents also contends that Mr. K.S. Lather the then Depu ty Manager couldn’t be produced as a witness, since he had in the mean time reti red from service. But the other 2 Members of the Investigating Team were produce d during the enquiry and accordingly it is submitted that no prejudice has been caused to the delinquent for not been able to cross-examine Mr. K.S. Lather who headed the 3 Member Investigating Team.

6.3 The learned Counsel for the FCI also contends that as the delinq uent was admittedly the Depot In-charge between 13.5.1991 to 31.12.1991, which s ubstantially covers the period when the discrepancy in rice stock was noticed, t he Disciplinary Authority had rightly ordered for recovery of the loss caused to the FCI, by the negligent conduct of delinquent.

6.4 It is further contended that even without a charge or a finding of misappropriation, the Disciplinary Authority was within its right to order re covery, to make good the loss suffered by the Organization thorugh the negligent acts of the delinquent.

7. The submissions made by the rival counsels have been considered. It is seen from the Charge Memo dated 20.6.2000 that Mr. K.S. Lather who headed the Investigation Team was cited as the first witness on behalf of the Manageme nt. The finding of the investigation team was made the basis of the charges and more importantly, the charges were held to have been established because of the

failure of the delinquent to rebut the finding of the investigation through cross-examination of the witnesses.

8. When so much reliance on the findings of the investigation team has been placed and the head of the investigating team was cited as a Management witness, in order to afford a fair opportunity to rebut the charges, the Investigation Report should have been furnished. This was particularly necessary since adverse inference is drawn against the delinquent for his failure to rebut the findings of the investigation. Considering that Mr. Lather was heading the Investigating team and was cited as a management witness, the Disciplinary Authority should have also produced Mr. K.S. Lather whom, the delinquent wanted to cross-examine.

9. That apart, there is no explanation anywhere as to the quantity of rice lost between 1.4.1991 to 15.3.1991 when the delinquent was not the Depot In-charge. In such circumstances, it is not understood as to how the entire blame for the discrepancy in the rice stock is placed upon the delinquent for a period when he was admittedly not the Depot In-charge in the FCI godown.

10. It is also of considerable significance that no charge of misappropriation was leveled against the delinquent not any finding of misappropriation was given by the Enquiry Officer. Nevertheless the Disciplinary Authority ordered the penalty of recovery by assuming that it was the delinquent who had misappropriated the rice stock from the FCI godown. Obviously the mind of the Disciplinary Authority on the nature of the penalty to be imposed was influenced by his assumption that the delinquent had misappropriated the rice stock. But in the absence of any such finding or even a charge of misappropriation, I am of the considered view that the penalty decision of the Disciplinary Authority was vitiated.

11. Under Regulation 60(1)(a), a second show-cause-notice on the proposed penalty of recovery is required to be given and in this case delinquent was never informed of the proposed penalty, before the impugned order was passed on 19.12.2001. Thus the procedure prescribed by the Regulation in imposing the penalty of recovery was ignored and this too has resulted in denial of the prescribed opportunity to respond to the proposed penalty.

12. In this case, the delinquent has been inflicted the penalty of recovery on an unproved conclusion of misappropriation. The investigation report which was made the basis of the other charges was not furnished to him. More significantly, the alleged failure of the delinquent to rebut the conclusions in the said investigation has prompted an adverse finding against him by the Enquiry Officer. The head of the investigation team who was cited as a management witness was never produced by the respondents. This prevented the said witness from being cross examined by the delinquent. From these it is apparent that the departmental proceeding was conducted in an unfair manner where a fair opportunity to rebut the charges was not made available to the petitioner.

13. As is already recorded, the blame for rice shortfall in the FCI depot for the entire period from 1.4.1991 to 31.12.1991 has been attributed to the negligence of the petitioner although he was not the depot in-charge for this entire period.

14. Then again the penalty of recovery of the alleged loss to the FCI was inflicted by assuming misappropriation (without any such finding), by disregarding the requirement of a 2nd show cause of notice prescribed under Regulation 60 (1)(a) and therefore the impugned action is also vitiated by procedural irregularity.

15. For the foregoing reasons and having regard to the law laid down by the Apex Court in the case of State of U.P. vs. Shatrughan Lal reported in AIR 1998 SC 3038, I hold that the impugned action of the Disciplinary Authority is vitiated in law as the delinquent was punished through an unfair proceeding. Accordingly I hold that the impugned actions cannot be sustained and the same is set aside and quashed. The writ petition stands allowed accordingly by interfering with the impugned penalty dated 19.12.2001.